

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2006

CORAM:

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Criminal R.C. No.860 of 2003

Prema

.. Petitioner/PW2

Vs.

1. Ramesh

2. Magalakshmi

3. Manjula

4. State rep. by its
Deputy Superintendent of Police,
Kadurantakam,
Kancheepuram District.

.. Respondents/
Accused 1 to 3 & Complainant.

Criminal Revision Petition filed under Section 397 and 401 Cr.P.C. against the Judgment made in S.C.No.206 of 2002, dated 11.02.2003 on the file of the Additional District and Sessions Judge - cum - Fast Track Court, Kancheepuram.

For petitioner : Mr.S.M.Loganathan

For respondents : Mr.S.D.N.Vimalanathan for R1 to R3
Mr.R.Muniappa Raj, Govt. Advocate (Crl.side) for R4

O R D E R

This Criminal Revision is preferred against the Judgment of acquittal, dated 11.02.2003, recorded by the learned Additional District and Sessions Judge - cum - Fast Track Court, Kancheepuram in S.C.No.206 of 2002.

2. The revision petitioner is the mother of the deceased Vijayalakshmi and she was examined as P.W.2 in the sessions case. The first respondent / A1 is the husband, second respondent / A2 and third respondent / A3 are respectively mother-in-law and sister-in-law of the deceased. As per the prosecution case, on

02.03.2000, at about 10 p.m., P.W.1 was informed that the deceased Vijayalakshmi was not found in her matrimonial house, from 1 p.m. on the said date. After knowing the fact, P.W.1 and others were searching the deceased in various places, including the house of their relatives. On 03.03.2000, at about 6 a.m., an information, the dead body of Vijayalakshmi was recovered from a well, meant for drinking water at Sadachivakkam Village. P.W.1 gave a complaint narrating the above said facts before the G4 Uthirameur Police Station, wherein he has stated that he had come to know that A1 use to demand dowry from the deceased, based on the complaint, the case was registered against the respondents 1 to 3 under Sections 498(A) and 498 (A) r/w 34 IPC and also 304(B) and 306 IPC. When the charges framed against the respondent / accused put on them, each of them pleaded not guilty.

3. In support of the case, on the side of the prosecution, P.W.1 to 13 were examined and Ex.P.1 to P.23 were marked. On the side of the respondent, D.W.1 and D.W.2 were examined.

4. Considering the oral and documentary evidence and the arguments advanced by both sides, the learned Additional District and Sessions Judge / Fast Track Judge, Kancheepuram, acquitted the first respondent / A1 under Sections 498A, 304(B) and 306 IPC and the respondents 2 and 3 / A2 and A3 under Sections 498A read with 34, 304(B) and 306 IPC, on the ground that the alleged guilt against the respondents / accused was not proved beyond reasonable doubt. Against judgment of acquittal recorded by the court below, the mother of the deceased Vijayalakshmi has filed this Criminal revision petition.

5. According to the learned counsel for the revision petitioner, the prosecution has established that the respondents / accused were in the habit of demanding dowry from the deceased and that the evidence of P.W.1 and P.W.2 would be sufficient to establish that there was dowry harassment by the respondents / accused, due to which, she died, but the court below, without considering the evidence properly, acquitted them from the charges.

6. According to the learned counsel for the petitioner, as per the evidence of P.W.2, A1, had demanded land, but the court below has held that there was no demand of money or jewel by the respondents / accused and that the court below could have drawn inference under Section 113 (B) of the Indian Evidence Act, fixing the burden on the respondents / accused.

7. Per contra, the learned counsel appearing for the respondents / accused would contend that the first respondent / A1 and the deceased had married, after having love affair and hence, there was no dowry harassment, as alleged by the revision

petitioner, and he further contended that there are contradictions in the evidence of the prosecution witnesses, so as to vitiate the prosecution case and therefore, the trial court held that the charges against the respondents / accused were not proved.

8. According to P.W.1, the death of the deceased Vijayalakshmi was brought to light on 03.06.2000 at about 6 a.m, and the complaint, Ex.P.1 was given only at 8.30 a.m, wherein P.W.1 had not stated anything about dowry harassment by the respondents / accused. The third respondent married sister of the first respondent / A1, who was residing in the house, who had been deserted by her husband has been impleaded as the third respondent, which according to the learned counsel for the respondents, would show that P.W.1 and P.W.2 and their family members were interested only in prosecuting the respondents, with an ulterior motive.

9. As per Section 498 A of Indian Penal Code, whoever, being the husband or the relatives of a woman, subjects her to cruelty, shall be punished under Section 304(B) IPC, reads as follows :

" As per this section, if prima facie it is established that the death of a woman is caused by any burns or bodily injury or occurs otherwise than normal circumstances, within 7 years of her marriage and soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with demand for dowry, there shall be legal presumption that the death was caused due to dowry harassment."

10. In this case, trial court has given a finding that P.W.1, the defacto complainant had not stated anything that the respondents / accused had demanded dowry from the deceased. Though P.W.1 has deposed that there was panchayat conducted between the parties, prior to the death of Vijayalakshmi on the dowry harassment, no such witness has supported the prosecution case. It is not in dispute that the alleged panchayatdars turned hostile. According to P.W.2, mother of the deceased, A1 demanded to gift a land in his favour, but admittedly, the said land was not the property of P.W.2 and it belongs to the brother of P.W.2. As found by the court below, P.W.1 has stated that on 03.03.2000, at about 5.30 a.m, she gave the complaint. But from the complaint, Ex.P.1, it is seen that the same was given at 8.30 a.m, on the said date and the trial court has also pointed out the above contradiction. Further, according to P.W.1, she does not know what is written in Ex.A.1, since the same is not written by him, and according to him, he had affixed only his signature.

11. As per Ex.P.14, report of the Revenue Divisional Officer, when P.W.1 was examined, he had informed that at about 10.00 p.m, on 02.03.2000, the date of occurrence, he was informed by one Kuselan that the deceased Vijalayakshmi was not found in her house and in the early morning on 03.03.2000, while searching her it was informed that the dead body of Vijayalakshmi was floating in a well, then he went to police station and lodged the complaint, Ex.P.1.

12. It is not in dispute that the first respondent / A1 married the deceased due to their love affair and there was no complaint of dowry harassment, before the police or any other authority, prior to the death of deceased Vijayalakshmi, either by herself or by her parents. As per the medical evidence, the following injuries were found on the dead body of the deceased Vijayalakshmi.

" Antemortem injuries noted : 1. Abrasion 2 x 3 cms on right eyebrow and forehead. 2. Abrasion 2 x 1 cms on the front of right side chest. 3. Abrasion 4 x 3 cms on the back right elbow. 4. Abrasion 4 x 3 cms back of middle of right forearm. 5. Abrasion 3 x 2 cms on the dorsum of right wrist. 6. Abrasion 3 x 2 cms on the dorsum of right hand. 7. Abrasion 3 x 2 cms on the outer aspect of left arm. 8. Abrasion 4 x 2 cms on the back of left forearm. 9. Contusion on the left upper eyelid 3 x 2 x 1 cms. 10. Contusion on the right upper eyelid 4 x 3 x 1 cms and eyebrow.
Scalp tissue : Intact, Vault, Base, Dura : Intact Brain C/s Congested. Hyoid bone: Intact. Trachea : Intact C/s. Contained mucous froth."

13. As per the evidence of P.W.11, the Doctor, who conducted postmortem on the dead body of the deceased, Vijayalakshmi, as stated in Ex.P.7, postmortem certificate, the injuries found by the Doctor could have been occur, even due to accidental drowning in a well. In this case, it has been established that the deceased Vijayalakshmi had died, within 7 years after marriage. But, it has not been established by prosecution, whether the death was suicide or occurred due to accidental drowning into the well and further, even in the complaint, Ex.P.1, given by P.W.1, there is no allegation of dowry harassment by the first respondent / A1 or the other respondents, who are relatives of the husband of the deceased. On a perusal of the Section 304(B) IPC, I am of the view that if dowry harassment by the husband or any of his relatives, soon before the unnatural death of the deceased, who died on

account of bodily injury or burns is not established, then the court cannot draw any legal presumption under Section 304 B of IPC. On the facts and circumstances of the case, the trial court has held that the prosecution has not established the case, so as to draw the presumption, under Section 304(B) IPC.

14. It is not in dispute that in a criminal revision against acquittal, the scope for interference, by this Court is limited. Only on manifest error or patent irregularity leading to perverse finding, this Court can interfere and reverse the finding of the trial court. In this case, on a perusal of the impugned judgment with reference to the evidence on record, I could find no manifest error or perverse finding, so as to interfere with the same, in the revision preferred against acquittal.

12. Considering the evidence and the finding of the court below, I am of the view that there is no infirmity or illegality in the Judgment rendered by the courts below in acquitting the respondents / accused. Hence, confirming the Judgment rendered by the courts below, the revision petition is dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Deputy Superintendent of Police,
Kadurantakam, Kancheepuram District.
2. The Additional District and Sessions Judge
- cum - Fast Track Court, Kancheepuram.
3. Do- Thro' The Principal Sessions Judge,
Kancheepuram.
4. The Public Prosecutor
High Court, Madras - 104.

NG(CO)
SR/5.2.2007

Cr1.R.C. No.860 of 2003